



UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of :
Werner Haug : DECISION ON PETITION TO
Application No. 10/009,680 : WITHDRAW HOLDING OF
Filed: 20 September, 2001 : ABANDONMENT
Attny Docket No. FE-15PCT :

This is a decision on the petition filed on 3 April, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit a reply to the final Office action mailed on 9 January, 2006, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on 20 September, 2006.

Petitioner asserts that the final Office action mailed on 9 January, 2006, was not received because it was mailed to the wrong address due to USPTO error. Specifically, petitioner asserts that a Change of Correspondence Address was filed on 22 April, 2002, but that the Office action mailed on 9 January, 2006, was mailed to the previous address.¹

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting

¹ In support, petitioners have filed a copy of a change of correspondence address listing the new address. The change of correspondence address lists the application number of the prior-filed PCT application. It appears that petitioners did not receive notice of the present application's application number, and therefore were unable to file the change of correspondence address with the correct application number.

to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

A review of the Official file reveals that the Office action mailed on 9 January, 2006, was returned as undeliverable. Additionally, the Notice of Abandonment mailed on 20 September, 2006, was returned as undeliverable. As such, the showing of record is that there was an irregularity in the mailing of the Office action mailed on 9 January, 2006, in that said Office action was not mailed to the current correspondence address.

Consequently, there was no abandonment in fact.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The correspondence address has been updated.

The application file will be referred to the Technology Center's Technical Support Staff for remailing of the Office action mailed on 9 January, 2006. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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